



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 30

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November 9, 2004

Loudspeaker Components, LLC
Mr. Neil Kirschbaum
Mr. Brian Haas
7596 U.S. Highway 61 South
Lancaster, WI 53813

**Re: Loudspeaker Components, LLC
Case 30-RM-543**

Dear Messrs. Kirschbaum and Haas:

The Region has carefully investigation and considered your petition in the above-captioned case, petitioning for an investigation and determination of representatives under Section 9(c) of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your petition for the following reasons:

You failed to provide sufficient evidence to support your “good-faith reasonable uncertainty” as set forth in *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001). It has been settled that non-membership in the union does not establish that employees do not want to be represented by the union. *Kentucky Fried Chicken, Caribbean Holdings, Inc.*, 341 NLRB No. 13 (2004). In *Kentucky Fried Chicken*, 3 of 41 employees expressing that they did not want to be in the union was found to be insufficient to establish a reasonable uncertainty that the Union still represents a majority of the employees. *Id* at 24.

In *McDonald Partners, Inc. d/b/a Rodgers & McDonald Graphics*, 342 NLRB No. 63, (July 30, 2004) the Board, after having the case remanded by the Court of Appeals for the D.C. Circuit, was instructed to consider the lack of union membership as a factor when evaluating an employer’s good-faith reasonable uncertainty. The court had determined that the Board erred by not considering evidence of declining union membership. The court continued to find that while union membership and dues check-off might not demonstrate a lack of majority it may suggest an erosion of majority support and therefore, be probative of an employer’s good faith doubt. The Board accepted the court’s opinion as the law of case.

In the current case, you provided the following evidence: (1) out of the 50 bargaining unit employees only 21 employees are union members, (2) two current employees stated their desire to leave Union membership, and (3) ownership and management styles have changed since the previous collective bargaining agreements were ratified. The evidence and circumstances

surrounding the current case are distinguishable from *McDonald*. In the current case there was no evidence that any employees voiced their disaffection with the Union's representation, only that employees no longer wanted to be members. In *McDonald*, one of the union stewards who resigned from the union commented that others and herself were dissatisfied with the Union's representation. In *McDonald*, there was additional evidence of disaffection, including the resignation of two stewards, failure of the union to hold meetings with members, process grievances, and involve the employees in contract negotiations. None of these circumstances exist in the current case. Since the current case is distinguishable from *McDonald*, I find the Employer's petition, which was based on a minority of the bargaining unit employees being members and two employees expressing that they did not want to be members of the union, is not supported by sufficient evidence of a good-faith reasonable uncertainty of the Union's majority status.

Your Right to Seek Review. The National Labor Relations Board's Rules and Regulations permits any party to obtain a review of this action by filing a request (eight copies) with the Executive Secretary. If you wish to seek review of this action, your attention is directed to the following.

Review Request Due Date: The request for review must be received by the Executive Secretary in Washington, D.C. by the close of business at 5:00 p.m. (ET) on November 23, 2004. However, if you mail the request for review, it will be considered timely if it is postmarked no later than one day before the due date.

Extension of Time to File Request for Review: Upon good cause shown, the Board may grant special permission for a longer period within which to file. A request for an extension of time should be submitted to the Executive Secretary. A copy of any such request for extension of time should be submitted to me and to each of the other parties to this proceeding and the copy must be served in the same or faster manner as that utilized in filing the request with the Board.

Request for Review Contents: Any request for review (eight copies) must contain a complete statement setting forth the facts and reasons upon which it is based. You should send a copy of the request for review to me. The request for review must be served in the same or faster manner as that utilized in filing the request with the Board.

Address for Request for Review: The request for review should be sent to the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570.

Very truly yours,

/s/ Irving E. Gottschalk

Irving E. Gottschalk
Acting Regional Director

cc: See next page

cc: Mr. Tim Sullivan
Sheet Metal Workers Association,
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1602 South Park Street
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148 East Wilson Street
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Executive Secretary ***VIA E-MAIL***
National Labor Relations Board
1099 14th Street, N.W.
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